

REMARKS

Applicant respectfully requests reconsideration of this application as amended. Claims 1, 19-34 are pending in the application. Claims 1, 21 and 30 have been amended. Claims 35-39 have been added. No claims have been canceled.

The Examiner indicated that claim 34 was in condition for allowance. Applicant thanks the Examiner. The remaining comments are directed to non-allowed claims.

The Examiner indicated that claims 21-24 were objected to as to being dependent upon a rejected base claim, but would be allowance if rewritten in independent form including all the limitations of the base claim and any intervening claims. Applicant has amended claim 21 to include substantially all the limitations of the base claim and any intervening claims. Claims 22-24 depend on claim 21. Therefore, Applicant respectfully submits that claims 21-24 are in condition for allowance and are respectfully request the Examiner to throw out the objection.

The Examiner has rejected claims 1 and 19-34 under the doctrine of double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,745,339. The doctrine of double patenting is based on a comparison of the claims. The claims in the parent application are not identical to the currently pending claims. In fact, claim 1 of the '339 patent is as follows:

A method of dynamically switching among a plurality of fault tolerance schemes associated with a fault tolerance mechanism that executes in a distributed system, the method comprising:

obtaining a wait time of at least one user interface event occurring in said distributed system, said wait time including at least one of a communications time, a service time and a fault tolerance time;

determining whether a mean of said wait time is greater than a predetermined mean wait time threshold;

determining whether said communications time, said service time and said fault tolerance time are mutually independent when said mean of said wait time is greater than said predetermined mean wait time threshold;

determining whether said mean of said wait time can be improved by reducing a mean of said fault tolerance time when said communications time, said service time and said fault tolerance time are mutually independent; and

switching from a first of said plurality of fault tolerance schemes to a second of said plurality of fault tolerance schemes when said wait time can be improved by reducing said mean of said fault tolerance time.

As evident, claim 1 of the '339 is narrower than the currently pending claims in some aspects and broader in others. Currently pending claim 1 requires evaluating at least one measured time associated with the least one user interface event and dynamically selecting one of multiple fault tolerance schemes to improve user perceived performance. Applicant reminds the Examiner that an Applicant is allowed to claim an invention in many different ways. Applicant is able to use a continuation application to further prosecute claims to an invention that are not claimed in the same manner. In view of this, Applicant respectfully requests the Examiner to withdraw the double patenting rejection.

The Examiner rejected claims 1, 19, 20, 25-34 under 35 U.S.C. § 102(e) as being anticipated by D'Souza (U.S. 6,446,218). Applicant respectfully disagrees.

Claim1 is as follows:

A method comprising:

evaluating at least one measured wait time associated with at least one user interface event in relation to a desired level of fault tolerance associated with an application executing-in a system; and

dynamically selecting use of one of a plurality of fault tolerance schemes to improve user perceived performance of the system as a result of evaluating the at least one measured wait time in relation to the desired level of fault tolerance.

(emphasis added)

As set forth above, the limitations of claim 1 include evaluating a measured wait time associated with at least one user interface event and selecting a fault tolerance scheme to improve the user perceived performance. Applicant respectfully submits these features are not shown in D'Souza. The Examiner believes these features are shown in D'Souza in column 7, lines 27-30 and lines 38-42. However, Applicant respectfully submits that these features are not shown at these locations. More specifically, there is no disclosure in D'Souza that talks about measuring the wait time associated with at least one user interface event. Since the user experiences or utilizes the user interface, user interface events affect how that the user perceives the performance of the system. Therefore, by evaluating the wait times associated with user interface events in relation to the desired level of fault tolerance associated with the application executing in the system, a decision can be made as to which of multiple fault tolerance schemes to select to impact user perceived performance. Applicant respectfully submits that such features are just not shown in D'Souza.

The Examiner does correctly point out that D'Souza teaches ascertaining a fault tolerance level associated with a software program by examining the status of software modules running on computers, determining if the fault tolerance level is below a predefined acceptable fault tolerance level, and loading another module software on a suitable computer if one is so available. However, there is no disclosure in D'Souza of measuring wait times associated with user interface events and then selecting fault tolerant schemes based on the user perceived performance as a result of the evaluation.

In view of the above, the present invention as claimed in claim 1 is not anticipated by D'Souza.

With respect to claims 31-33, the same arguments with respect to claim 1 apply to claims 31-33 as well and are incorporated herein by reference. Furthermore, claims 31-33 sets forth that

the selecting of one of the multiple fault tolerance schemes occurs to reduce fault tolerance time when communications time, service time, and fault tolerance time are independent to respect to each other. This is clearly not shown in D'Souza. More specifically, D'Souza does not specify any detail towards selecting a fault tolerance scheme to reduce fault tolerance time when communications time, service time, and fault tolerance time are independent of each other. Therefore, Applicant respectfully submits that claims 31-33 are not anticipated by D'Souza.

Accordingly, Applicants respectfully submit that the rejections to the claims and the abstract have been overcome by the amendments and the remarks and withdrawal of these rejections is respectfully requested. Applicants submit that claims 1 and 19-33 as amended and claims 35-39 as added are in condition for allowance and such action is earnestly solicited.

If there are any additional charges, please charge Deposit Account No. 02-2666 for any fee deficiency that may be due.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Date: 1/22/06

By: Michael J. Mallie
Michael J. Mallie
Reg. No. 36,591

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025
(408) 720-8300